

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Defendant Michael Perez pled guilty to Count 25 of the Fourth Superseding Indictment for possession with intent to distribute at least 50 grams of methamphetamine. On August 8, 2016, the Court sentenced Defendant to 168 months imprisonment. Defendant later asked the Court to reduce his sentence under Amendment 782 to the U.S. Sentencing Guidelines, which retroactively reduced the base offense levels for given quantities of drugs by two. The Court denied the motion as moot, because Amendment 782 had already been incorporated into the version of the Guidelines under which Defendant was sentenced.

Defendant has now filed a motion for habeas corpus relief under 28 U.S.C. § 2255. Via his Plea Agreement, however, Defendant waived the right to bring such a motion except as to non-waivable claims of ineffective assistance of trial counsel. All grounds in the motion are therefore waived except the first and fifth grounds.¹

¹In the fifth ground, Defendant argues his waiver of habeas corpus rights was not knowingly and intelligently made. The Court rejects this ground. The Plea Agreement and the Rule 11 colloquy thoroughly ensured that the plea was voluntary, knowing, and intelligent.

In the first ground, Defendant argues that trial counsel was ineffective for failing to file a notice of appeal despite Defendant having told him he wanted to appeal. The Court rejects this ground. Defendant waived his right to appeal the sentence calculation, except any sentence above the Guideline range as determined by the Court. The Court did not sentence Defendant above the Guideline range determined by the Court. Counsel was not ineffective for failing to file a notice of an appeal where the right to appeal had been waived.

CONCLUSION

8 IT IS HEREBY ORDERED that the Motion to Vacate, Set Aside, or Correct Sentence
9 under 28 U.S.C. 2255 (ECF No. 219) is DENIED.

10 IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

11 IT IS SO ORDERED.

12 || DATED: This 13th day of April, 2017.

~~ROBERT C. JONES
United States District Judge~~